IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

GEORGE S. RUSH, III,	)	
	)	
Petitioner/Defendant,	)	
	)	**CIVIL NO. 08-cv-479-JPG**
vs.	)	
	)	**CRIMINAL NO. 04-cr-40023**
UNITED STATES of AMERICA ,	)	
	)	
Respondent/Plaintiff.	)	

<u>**MEMORANDUM AND ORDER**</u>

GILBERT, District Judge:

This matter is before the Court on Petitioner's motion for relief pursuant to 28 U.S.C. § 2255. In an open plea, Petitioner pleaded guilty to three counts involving the distribution of crack cocaine; he was sentenced to 235 months imprisonment, six years supervised release, a fine of $1500, and a special assessment of $300.[1]   In his second appeal, following his resentencing, counsel filed an *Anders* brief.   In that brief, counsel identified just two issues related to the reasonableness of Petitioner's new sentence.   The Seventh Circuit agreed that each potential argument was legally frivolous, thus granting counsel's motion to withdraw and dismissing the appeal. *United States v. Rush*, 190 Fed.Appx. 505 (7th Cir. 2006), *cert. denied,* 127 S.Ct. 3058 (2007).

On July 3, 2008, Petitioner filed the instant motion under § 2255 in which he Petitioner raises two grounds for relief: (1) counsel was ineffective in allowing him to enter a guilty plea that was unknowing and involuntary, and (2) his sentence should be recalculated based upon Amendment 709

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[1] His original sentence included a $3000 fine. However, on his first direct appeal, the case was remanded for resentencing in light of *United States v. Booker*, 543 U.S. 220 (2004). *United States v. Rush*, Appeal No. 04-3547 (7th Cir., April 8, 2005). The new sentence imposed was identical to the original, except that the fine was reduced to $1500.

of the Sentencing Guidelines.

The Court **ORDERS** the Government to file a response to Petitioner's motion within **THIRTY (30) DAYS** of the date of this Order. The Government shall, as part of its response, attach all relevant portions of the record.

IT IS SO ORDERED.

Dated: December 4, 2008.

      s/ J. Phil Gilbert
      U. S. District Judge